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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 ANNISSA SHIRLEY DUNNELL,
8 Plaintiff,

9 -vs-

10 CAROLYN W. COLVIN, Commissioner
11 of Social Security,¹
12 Defendant.

NO. CV-12-0047-WFN

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

13 Before the Court are cross-Motions for Summary Judgment (ECF Nos. 15 and 24).
14 Attorney Lora Lee Stover represents Plaintiff. Special Assistant United States Attorney
15 Terrye E. Shea represents Defendant. The Court has reviewed the administrative record and
16 briefs filed by the parties and is fully informed.

17 **JURISDICTION**

18 On November 4, 2009m, Plaintiff protectively applied for social security income [SSI]
19 benefits, alleging disability beginning on February 1, 2008, due to chronic epilepsy . The
20 application was denied initially and on reconsideration.

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23 ¹ Carolyn W. Colvin became the Acting Commissioner of Social Security on
24 February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn
25 W. Colvin is substituted for Michael J. Astrue as the defendant in this suit. No further action
26 need be taken to continue this suit by reason of the last sentence of 42 U.S.C. § 405(g).

ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT - 1

1 At a hearing before Administrative Law Judge [ALJ] R. J. Payne on March 30,
2 2011, Plaintiff, represented by counsel, and medical experts testified. The Appeals Council
3 denied Plaintiff's request for review making the ALJ's decision the final decision of the
4 Commissioner. Pursuant to 42 U.S.C. § 405(g), this final decision is appealable to the
5 district court. Plaintiff sought judicial review on January 12, 2013.

6 **FACTS**

7 The facts of the case are set forth in detail in the transcript of the proceedings and are
8 briefly summarized here. Plaintiff was nineteen years old at the time of the hearing. She did
9 not complete high school, but was in the midst of course work to earn her GED. Plaintiff has
10 had two grand mal seizures in her life, and none that she is aware of for the last two and
11 a half years. She has an abnormal area in the left temporal lobe. She is on anti-seizure
12 medication and stays compliant. She has a cognitive disorder of unknown origin. She has
13 never worked.

14 **ADMINISTRATIVE DECISION**

15 In his thorough opinion, the ALJ found Plaintiff has two severe impairments, but
16 is not disabled. At step one the ALJ found that Plaintiff had not engaged in substantial
17 gainful activity since the alleged onset date. At step two, the ALJ found that Plaintiff
18 has two severe impairments: seizure disorder and cognitive disorder, not otherwise
19 specified. At step three, the ALJ determined that Plaintiff does not have an impairment
20 or combination of impairments that meet or medically equals one of the listed impair-
21 ments in 20 C.F.R. Part 404, Subpart P, Appendix 1. The ALJ found that Plaintiff has the
22 residual functional capacity to perform a full range of work at all exceptional levels, but
23 that she has non-exertional limitations. He did note that the possibility of seizure did
24 limit access to hazardous conditions or triggers for seizures such as concentrated
25 exposure to noise, vibration, fumes, odors, and others. Since Plaintiff had no past
26 relevant work, the ALJ moved to step five. Upon consulting the grids, the ALJ deter-

1 mined that jobs exist in significant numbers in the national economy that the Plaintiff can
2 perform.

3 STANDARD OF REVIEW

4 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the court set out the
5 standard of review:

6 A district court's order upholding the Commissioner's denial of benefits is
7 reviewed *de novo*. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000).
8 The decision of the Commissioner may be reversed only if it is not supported
9 by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d
10 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more
11 than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another
12 way, substantial evidence is such relevant evidence as a reasonable mind
13 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402
14 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational
15 interpretation, the court may not substitute its judgment for that of the
16 Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social*
17 *Sec. Admin.* 169 F.3d 595, 599 (9th Cir. 1999).

14 The ALJ is responsible for determining credibility, resolving conflicts in
15 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d
16 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de*
17 *nov**o*, although deference is owed to a reasonable construction of the applicable
18 statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

17 It is the role of the trier of fact, not this court, to resolve conflicts in evidence.
18 *Richardson*, 402 U.S. at 400. If evidence supports more than one rational interpretation, the
19 court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at
20 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision
21 supported by substantial evidence will still be set aside if the proper legal standards were not
22 applied in weighing the evidence and making the decision. *Browner v. Secretary of Health*
23 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists to
24 support the administrative findings, or if conflicting evidence exists that will support a
25 finding of either disability or non-disability, the Commissioner's determination is conclusive.
26 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

SEQUENTIAL PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a physical or mental impairment prevents him from engaging in his previous occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the claimant can make an adjustment to other work; and (2) specific jobs exist in the national economy which claimant can perform. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-94 (2004). If a claimant cannot make an adjustment to other work in the national economy, a finding of "disabled" is made. 20 C.F.R. §§ 404.1520(a)(4)(I-v), 416.920(a)(4)(I-v).

ISSUES

Plaintiff presents two issues: (1) the ALJ erred assessing Plaintiff's residual functional capacities, specifically the ALJ should have called a vocational expert as a witness; and (2) the record does not support the ALJ's decision that Plaintiff is not disabled.

DISCUSSION

Plaintiff's main concern in the first assignment of error is the lack of vocational expert. "There are two ways for the Commissioner to meet the burden of showing that there is other work in 'significant numbers' in the national economy that claimant can perform: (a) by the testimony of a vocational expert, or (b) by reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2." *Tackett v. Apfel*, 180 F.3d 1094, 1100-01 (9th Cir. 1999). "The Commissioner's need for efficiency justifies use of the grids at step five where they completely and accurately represent a claimant's limitations." *Id.* at 1101.

1 "[T]he fact that a non-exertional limitation is alleged does not automatically preclude
2 application of the grids. The ALJ should first determine if a claimant's non-exertional
3 limitations significantly limit the range of work permitted by his exertional limitations."
4 *Id.* at 1102.

5 The ALJ properly applied the grids. Though the ALJ determined that Plaintiff's
6 cognitive disorder has some effect on her functioning, he found that the non-exertional
7 limitations did not limit Plaintiff's range of work. The ALJ's determination that Plaintiff
8 is able to perform work in all exertional categories and that the non-exertional imitations
9 have little or no effect on the occupational base of unskilled work at all exertional
10 levels is supported by substantial evidence. Based on those findings, application of the
11 grids completely and accurately represented Plaintiff's abilities and limitations. *Id.*
12 at 1101.

13 Regarding Plaintiff's more general second complaint that the ALJ's opinion is not
14 supported by the evidence, the Court disagrees. The ALJ's detailed opinion makes it clear
15 that the ALJ examined all evidence submitted, expanded the record where necessary, and all
16 conclusions of fact are supported by substantial evidence.

17 CONCLUSION

18 Having reviewed the record and the ALJ's findings, the Court concludes the ALJ's
19 decision is supported by substantial evidence and is not based on legal error. Accordingly,

20 IT IS ORDERED that:

21 1. Defendant's Motion for Summary Judgment, filed February 14, 2013, **ECF No. 24**,
22 is **GRANTED**.

23 2. Plaintiff's Motion for Summary Judgment, filed October 1, 2012, **ECF No. 15**, is
24 **DENIED**.

25 The District Court Executive is directed to file this Order and provide copies to
26 counsel. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

DATED this 2nd day of May, 2013.

05-01-13

s/ Wm. Fremming Nielsen

WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE